

MAY 30 2003

NOT FOR PUBLICATION
UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

CATHY A. CATTERSON
U.S. COURT OF APPEALS

COMMONWEALTH OF THE NORTHERN
MARIANA ISLANDS,

Plaintiff - Appellee,

v.

YI XIOU ZHEN,

Defendant - Appellant.

No. 02-10365

D.C. No. CR-00-00012-GA

MEMORANDUM*

Appeal from the Supreme Court
of the Commonwealth of the Northern Mariana Islands
Miguel S. Demapan, Chief Justice, Presiding

Argued and Submitted May 6, 2003
Honolulu, Hawaii

Before: LEAVY, RYMER, and T.G. NELSON, Circuit Judges.

Yi Xiou Zhen appeals the decision of the Supreme Court of the
Commonwealth of the Northern Mariana Islands ("CNMI") affirming her

* This disposition is not appropriate for publication and may not be cited to or
by the courts of this circuit except as provided by Ninth Circuit Rule 36-3.

conviction and sentence for promoting prostitution in the second degree. We have jurisdiction pursuant to 48 U.S.C. § 1824, and we affirm.

Zhen raises several constitutional challenges to her conviction. Although we may review Zhen’s equal protection challenge, we can discern no class-based claim or allegation of discriminatory application. Accordingly, no cognizable equal protection claim exists for our review.¹ Her substantive due process and Sixth Amendment claims are also reviewable. However, our decision in *CNMI v. Atalig*² controls and defeats her claims. The right to a jury trial is not fundamental in this context. Finally, her Confrontation Clause claim is meritless. The court was free to prevent inquiry into tangential issues that would waste its time.³ It properly did so here.

Zhen also argues that the CNMI Supreme Court misinterpreted the CNMI law providing for jury trials.⁴ We may only review this issue if the CNMI Supreme Court’s decision is either a “subterfuge to avoid federal review of a

¹ *Freeman v. City of Santa Ana*, 68 F.3d 1180, 1187 (9th Cir. 1995).

² 723 F.2d 682, 690 (9th Cir. 1984).

³ *See* FED. R. EVID. 403; COM. R. EVID. 403; *Delaware v. Van Arsdall*, 475 U.S. 673, 679 (1986).

⁴ 7 CMC § 3101.

constitutional violation” or an untenable interpretation of the law.⁵ It is neither.

As discussed above, no fundamental right to a jury trial exists in the CNMI.

Moreover, the statute distinguishes between the sums at issue, and Zhen was charged and convicted under 6 CMC § 1346(c), not § 1346(e)(2). Thus, the CNMI Supreme Court’s decision is reasonable, and it certainly does not meet the standard allowing for our review.⁶

Zhen’s final claim is that the evidence does not support her conviction. We strongly disagree. The statute’s broad definition of sexual conduct⁷ clearly encompasses “sex,” as used in Zhen’s statement to Matsumura.

For the foregoing reasons, we affirm.

AFFIRMED.

⁵ *Ferreira v. Borja*, 1 F.3d 960, 962 (9th Cir. 1993) (internal quotation marks omitted).

⁶ *Id.*

⁷ *See* 6 CMC § 1341(a).